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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CESAR G.,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES,

Respondent;

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES
et al.,

Real Parties in Interest.

B177676

(Los Angeles County
Super. Ct. No. CK 47372)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 39.1B.) Anthony Trendacosta, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Robert N. Jacobs for Petitioner.

No appearance for Respondent.

Office of the County Counsel, Larry Cory, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

Law Offices of Anne E. Fragasso, Brenda Dabney and Patricia Meyerhoff for the Children.

Petitioner Cesar G. is the father of three-year-old J. and one-and-a-half-year-old Celeste, who are dependents of the juvenile court. He has filed a petition for extraordinary relief under California Rules of Court, rule 39.1B, seeking review of the juvenile court's order terminating reunification services and setting a permanency planning hearing. We conclude substantial evidence supports the court's order. Accordingly, we deny the petition.

FACTS AND PROCEDURAL HISTORY

J. was born in December 2001. J.'s mother, Christine, had a history of illegal drug use, and at J.'s birth tested positive for illegal drugs. J.'s father, petitioner Cesar, was not married to Christine and was a registered sex offender on parole for a gang rape conviction.¹ Upon J.'s birth, real party in interest Department of Children and Family Services detained her, filed a petition under Welfare and Institutions Code section 300², and suitably placed J.

¹ Real party in interest Department of Children and Family Services notes the court never expressly made a finding of paternity for Cesar. Both he and Christine, however, never wavered in claiming he was the children's father, and a fair reading of the matter's history before the court leaves little, if any, doubt that everyone else, including DCFS and the court, assumed he was the father, too.

² All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

Christine pleaded no contest to the petition, and Cesar submitted to it based on the department's report. The court ordered both parents to complete a parenting class and enroll in drug abuse rehabilitation and counseling programs. In addition, the court ordered Cesar to continue his sex offender counseling and random drug testing as required by his parole conditions.

One week before his parole was scheduled to end in July 2002, Cesar was arrested for possession of methamphetamine. The criminal court deferred entry of judgment on the drug charge and diverted Cesar to an 18-month drug treatment program. The following year, Christine gave birth to the couple's second child, Celeste. The department detained Celeste and placed her with J.'s foster family. A year later, Cesar was arrested for battery of a former cohabitant and was put on three years' formal probation.

At the contested 12-month review hearing in September 2004, the court noted it had ordered Cesar to obtain individual counseling and comply with the drug and domestic violence counseling programs imposed by the criminal courts.³ Despite having had more than two years since J.'s detention to complete his counseling programs, Cesar had only partially satisfied them. He had not enrolled in a domestic violence program as a condition of his probation for former cohabitant battery, and he had not completed his drug treatment program. The court further noted that Cesar's fitness for taking custody of his children involved more than compliance with his case plan, but also the future risk of harm to them. In that vein, the court noted Cesar's crimes after J.'s detention suggested such a risk. The court observed, "[E]ven giving the father all the benefit of the doubt . . . it's clear that [father] can't even look out for himself in terms of staying out of trouble, of complying with other court orders, to protect himself from a domestic-violence charge and being arrested, of not being in compliance with the case plan, of being violated, engaging in confrontations in front of the children. If he can't protect

³ This hearing had been continued a number of times, making "12 month" a misnomer.

himself, how is he going to protect his children?” The court therefore terminated family reunification services for Cesar and set a permanency planning hearing (§ 366.26) for January 13, 2005.⁴ In response, Cesar filed the petition for extraordinary writ now before us. (Cal. Rules of Court, rule 39.1B.)

DISCUSSION

The court ordered Cesar to complete the counseling and rehabilitation programs that the criminal courts imposed on him for his convictions. DCFS assisted Cesar by referring him to drug testing, parenting, and domestic violence classes. Despite the double-barreled offering, Cesar had not completed the counseling programs more than two years after J.’s placement in the dependency system. Despite his failure to complete his case plan, Cesar asks that we reverse the trial court’s finding that DCFS offered him sufficient reunification services and requests that we order DCFS to return his children to him.

We review for substantial evidence the trial court’s findings that, first, DCFS offered sufficient reunification services and, second, returning the children to Cesar would create a substantial risk of detriment. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) As for the reunification services, Cesar did not object below to the court’s finding that they were sufficient. He therefore waived his objection and cannot raise it for the first time on appeal. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416 [appeal is too late for parent to complain reunification services were inadequate if parent did not complain in the trial court].) But even if he did not waive his objection, it is not well taken. DCFS referred him to drug testing, parenting, and domestic violence programs, but he did not complete those he started. His failure to comply with his case plan was his doing, not DCFS’s. As for returning the children to him, failing to complete

⁴ The court had terminated mother’s reunification services in April 2004.

a reunification case plan is, by itself, prima facie evidence of the risk of detriment in returning a child. (§ 366.21, subd. (f).) Substantial evidence thus supported the court's order terminating reunification services and setting a permanency planning hearing.

DISPOSITION

The petition for writ of mandate is denied on the merits, and the order to show case is discharged. This opinion is final forthwith as to this court under rule 24(b)(3) of the California Rules of Court.

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RUBIN, J.

We concur:

COOPER, P.J.

BOLAND, J.